

FILED

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

JUN 20 2006

**U.S. DISTRICT COURT
CLARKSBURG, WV 26301**

TERESA R. ROBERTS,

Plaintiff,

v.

Civil Action No. 2:04CV61

**JO ANNE B. BARNHART,
COMMISSIONER OF
SOCIAL SECURITY,**

Defendant.

REPORT AND RECOMMENDATION/OPINION

Plaintiff brought this action pursuant to 42 U.S.C. §§ 405(g), to obtain judicial review of a final decision of the Commissioner of Social Security ("Commissioner") denying her claim for Disability Insurance Benefits ("DIB") under Title II of the Social Security Act ("Act"), 42 U.S.C. §§ 401-433, 1381-1383f. The matter is awaiting decision on Plaintiff's Motion for Judgment on the Pleadings and the parties' cross motions for remand and has been referred to the undersigned United States Magistrate Judge for submission of a Report and Recommendation. 28 U.S.C. § 636(b)(1)(B); Fed. R. Civ. P. 72(b).

I. Procedural History

On the 17th day of August, 2004, Plaintiff filed her Complaint [Docket Entry 1]. Defendant filed an Answer on October 22, 2004 [Docket Entry 5]. On the 22nd day of November, 2004, Plaintiff filed a Motion to Extend Time to file her motion for summary judgment [Docket Entry 6]. On the 22nd day of November, 2004, the Honorable Robert E. Maxwell, District Judge, entered an Order, wherein he ruled the motions for summary judgment would be filed on or before the 24th day of January, 2005, and Plaintiff's Motion to Extend Time to file her motion for summary judgment

was denied as moot [Docket Entry 7]. On the 24th day of January, 2005, Defendant filed a Motion for Summary Judgment [Docket Entry 8].

On the 9th day of March, 2005, District Judge Robert E. Maxwell entered an Order dismissing this case because Plaintiff failed to prosecute and to comply with the Court's order of November 22, 2004, in that she did not file her motion for summary judgment on or before the 24th day of January, 2005 [Docket Entry 9]. On March 22, 2005, Plaintiff filed her Motion to Vacate Opinion Memorandum and Judgment Order Entered March 9, 2005, and for Reconsideration of Plaintiff's Motion for Judgment on the Pleadings, which was attached thereto [Docket Entry 11]. On March 24, 2005, Plaintiff filed an Amended Motion to Vacate Opinion Memorandum and Judgment Order Entered March 9, 2005, and for Reconsideration of Plaintiff's Motion for Judgment on the Pleadings [Docket Entry 13]. On April 28, 2005, an order was entered by District Judge Robert E. Maxwell referring said motions to the undersigned Magistrate Judge [Docket Entry 15].

On the 10th day of May, 2005, a hearing on Plaintiff's Motion to Vacate Opinion Memorandum and Judgment Order Entered March 9, 2005, and for Reconsideration of Plaintiff's Motion for Judgment on the Pleadings and Amended Motion to Vacate Opinion Memorandum and Judgment Order Entered March 9, 2005, and for Reconsideration of Plaintiff's Motion for Judgment on the Pleadings [Docket Entries 11 and 13] was conducted by the undersigned. For reasons apparent to the Court and stated on the record of the May 10, 2005, hearing, the undersigned recommended the Court vacate the Order of March 9, 2005, dismissing this case, and reinstate the case on the Court's docket.

On January 23, 2006, the District Court reinstated this case on the Court's docket.

Plaintiff applied for DIB on April 18, 2002, alleging she had been disabled since July 2,

2001.

On May 11, 2006, Plaintiff filed her “Motion to Remand for New and Material Evidence” [Docket Entry 22]. In support of her Motion, Plaintiff attached a February 13, 2006, Decision by Administrative Law Judge Norma Cannon, finding as follows:

It is the decision of the Administrative Law Judge that, based on the application filed on August 26, 2004, the claimant is entitled to a period of disability commencing July 2, 2001 and to Disability Insurance Benefits under sections 216(i) and 223, respectively, of the Social Security Act.

It is the further decision of the Administrative Law Judge that, based on the application filed on August 10, 2004, the claimant was disabled under section 1614(a)(3)(A) of the social Security Act, beginning July 2, 2001, and that the claimant’s disability has continued at least through the date of this decision.

On June 16, 2006, Defendant filed her “Response to Plaintiff’s Motion to Remand and Cross-Motion to Remand,” requesting the Court remand this action under the fourth sentence of 42 U.S.C. §405(g). [Docket Entry 24]. In her Motion Defendant stated:

Based upon the subsequent decision, dated February 13, 2006, finding Plaintiff disabled since July 2, 2001, the Commissioner seeks remand on the basis that Plaintiff is entitled to a period of disability commencing July 2, 2001, and to disability insurance benefits based upon her application of April 18, 2002.

The undersigned therefore finds it is undisputed that Plaintiff is entitled to a period of disability commencing July 2, 2001, and to disability insurance benefits based upon her application of April 18, 2002.

II. RECOMMENDED DECISION

For the reasons herein stated, I **RECOMMEND** this matter be reversed and remanded to the Commissioner pursuant to sentence four of 42 U.S.C. §§ 405(g) solely for a computation and award of benefits and this matter be **DISMISSED** from the Court’s docket.

Any party may, within ten (10) days after being served with a copy of this Report and Recommendation, file with the Clerk of the Court written objections identifying the portions of the Report and Recommendation to which objection is made and the basis for such objection. A copy of such objections should also be submitted to the Honorable Robert E. Maxwell, United States District Judge. Failure to timely file objections to the Report and Recommendation set forth above will result in waiver of the right to appeal from a judgment of this Court based upon such Report and Recommendation. 28 U.S.C. § 636(b)(1); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984), cert. denied, 467 U.S. 1208 (1984); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *Thomas v. Arn*, 474 U.S. 140 (1985).

The Clerk of the United States Court for the Northern District of West Virginia is directed to provide a true copy of this order to all counsel of record.

DATED: June 20 2006.


JOHN S. KAUL
UNITED STATES MAGISTRATE JUDGE